

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
)	
Implementation of the Affordable Connectivity)	WC Docket No. 21-450
Program)	
)	

COMMENTS OF T-MOBILE USA, INC.

Michele K. Thomas
Indra Sehdev Chalk
Norina Moy
T-MOBILE USA, INC.
601 Pennsylvania Ave., NW
North Building, Suite 800
Washington, DC 20004
(202) 654-5900

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	iii
I. THE COMMISSION’S FIRST PRIORITY SHOULD BE ENSURING AN ORDERLY TRANSITION TO ACP AND MINIMIZING DISRUPTION FOR CONSUMERS.....	1
A. The Commission Should Ensure an Orderly Transition from the EBB Program to ACP.....	2
B. The Commission Should Not Put the Onus on Current EBB Households to Opt-In to ACP, When They Have Already Opted-In to Receiving Benefits.....	4
C. The Commission Should Ensure that EBB Households Continue to Receive an Affordable Service Offering.	6
D. The Commission Should Use an Annual Recertification Process to Implement New Eligibility Criteria.	8
II. THE COMMISSION SHOULD CONTINUE TO MAKE IT AS SIMPLE AS POSSIBLE FOR PROVIDERS TO UPDATE THE SCOPE OF THEIR PARTICIPATION.	10
A. Allowing Existing EBB Providers to Refresh Their Election Notices Will Be an Efficient Way for Them to Transition to ACP.	10
B. For Mobile Wireless Providers, the Commission Should Only Use ZIP Codes for Informational Purposes.	11
III. THE COMMISSION’S IMPLEMENTATION OF ACP SHOULD CONTINUE TO PROMOTE WIDESPREAD PARTICIPATION AND EFFICIENT DELIVERY OF BENEFITS FOR CONSUMERS.	12
A. The Commission Should Confirm that “Any” Offering Includes Low-Income Plans and Does Not Include Minimum Service Standards.	12
B. The Commission Should Continue Support for Bulk-Billing Arrangements.	14
C. The Commission’s Rules Should Continue Support for Associated Equipment, Including Mobile Hotspots.....	15
D. To Make the Administration of ACP More Efficient, the Commission Should Require All States to Participate in NLAD for ACP.....	17

E.	The Commission Should Harmonize the Reimbursement Process for ACP with the Lifeline Program and Give Providers Flexibility to Amend Their Claims, Particularly During the Transition.	18
F.	The Commission Should Clarify that Participating Providers May Use Credit Checks that Are Unrelated to the Receipt of ACP Benefits.	22
G.	The Commission Should Clarify the Trigger for When Providers May Terminate Broadband Service After 90 Days of Non-Payment.	23
IV.	THE COMMISSION SHOULD GIVE PROVIDERS FLEXIBILITY IN PROMOTING AWARENESS OF ACP.	24
A.	The Commission Should Clarify ACP Promotion Requirements for Customers Subscribing to or Renewing a Service Plan.	24
B.	The Commission Should Adopt the Lifeline Advertising Rules for ACP.	24
C.	The Commission Should Leverage Its Existing Interfaces to Support Informal ACP Complaints.	25
CONCLUSION.....		25

EXECUTIVE SUMMARY

The Federal Communications Commission’s (“Commission”) Emergency Broadband Benefit (“EBB”) Program has provided much-needed relief during the COVID-19 pandemic, connecting nearly 8 million low-income households to broadband services at a time when families are more reliant than ever on broadband for school, work, and connecting with their communities. Widespread participation among providers and steady enrollments show the continued need for the Affordable Connectivity Program (“ACP”), which has the opportunity to bring the transformative benefits of broadband access to low-income households on a more sustained basis.

T-Mobile has long been a leader in offering high-quality broadband offerings to all consumers, including low-income consumers, and the EBB Program was no exception. T-Mobile has made EBB discounts available for hundreds of its qualifying prepaid and postpaid mobile wireless plans—including unlimited plans—offered through our T-Mobile, Metro by T-Mobile, Assurance Wireless, and Sprint brands. All of this is in addition to T-Mobile’s other efforts to make mobile broadband available to all of our subscribers nationwide. That includes T-Mobile Connect, which offers unlimited talk and text as well as high-speed data to all subscribers starting at just \$15 per month, and a variety of other initiatives designed to help bridge the digital divide in our footprint, including Project 10Million, a five-year, \$10 billion effort to close the homework gap by offering school districts free internet access and mobile hotspots to serve 10 million eligible households. T-Mobile is committed to bringing mobile broadband service to consumers who need it most, and we applaud the Commission for moving swiftly to implement new rules for ACP.

In transitioning to a longer-term program, the Commission’s primary focus should be ensuring an orderly transition for consumers and providers to ACP, as contemplated by the Infrastructure Investment and Jobs Act. To ensure a successful Program, the Commission’s rules for ACP should continue to encourage widespread participation by providers, incentivize providers

to develop innovative new service offerings to connect low-income households, and ensure that ACP reaches as many eligible households as possible. With the benefit of experience from the EBB Program, the Commission should also take this opportunity to update its rules to make enrollment and reimbursement processes simpler, fairer, and more efficient. To accomplish these goals, T-Mobile recommends the Commission take the following actions:

First, prioritize an orderly transition and minimize disruption for current EBB households by:

- Providing flexibility during the transition, recognizing that implementing the changes from EBB to ACP in a truncated timeframe will be a challenge;
- Requiring existing EBB households to receive notice of the program changes but not requiring existing households to opt-in to continue receiving benefits after the transition;
- Allowing households enrolled in the EBB Program as of November 15 to retain their current benefit until March 1, 2022, or until the EBB Program's appropriation is expended, whichever comes later, consistent with Congress's intent that these households continue to have access to an "affordable service offering;" and
- Directing USAC to conduct an annual recertification process for ACP, including to implement changes to the eligibility criteria.

Second, create a simple process for existing EBB providers to update their election notices by:

- Allowing existing EBB providers to refresh their election notices with the opportunity to decline to participate in ACP by giving notice to USAC and notifying subscribers 30 days and 15 days in advance; and
- Using ZIP Codes only for informational purposes for mobile providers.

Third, promote widespread participation and efficient delivery of ACP benefits by:

- Allowing different brands or lines of businesses within the same legal entity to file separate election notices;
- Confirming that service plans intended for low-income consumers are eligible for reimbursement and that providers are only required to make current service offerings available for ACP (not legacy or grandfathered plans);
- Declining to adopt any minimum service standards, consistent with the EBB Program;
- Confirming that associated equipment, including mobile hotspots, remains eligible for support;
- As with the EBB Program, continuing to make bulk-billing arrangements eligible for reimbursement under ACP and recognizing that eligible service plans may differ for these offerings;
- Requiring all states to participate in NLAD for ACP to avoid delays in enrollment;
- Harmonizing ACP's reimbursement process with the Lifeline Program and giving providers flexibility to amend their claims for both EBB and ACP;
- Clarifying that providers may use credit checks in the ordinary course of business that are unrelated to the receipt of ACP benefits;
- With respect to termination of broadband service after 90 days of non-payment, clarifying that 90-day period begins to run from the subscriber's invoice date and that the limitation does not apply to prepaid plans; and
- Confirming that the obligation to notify customers about ACP when "renewing" a service plan does not apply to month-to-month service plans with no contracts.

Finally, give providers flexibility to promote awareness of ACP by:

- Adopting the Lifeline Program's advertising rules for ACP; and
- Using the existing Consumer Complaint Center for informal ACP complaints.

Adopting these proposals will help ensure a smooth transition and successful launch of the ACP Program.

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COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”)¹ submits these comments in response to the Federal Communications Commission’s (the “Commission”) Public Notice on implementing the Affordable Connectivity Program (“ACP”).²

I. THE COMMISSION’S FIRST PRIORITY SHOULD BE ENSURING AN ORDERLY TRANSITION TO ACP AND MINIMIZING DISRUPTION FOR CONSUMERS.

The Infrastructure Investment and Jobs Act (the “Infrastructure Act”),³ enacted on November 15, 2021, amends the EBB Program and continues it in the form of ACP.⁴ The amendments reduce the monthly benefit from \$50 to \$30, modify the eligibility requirements, and require providers to integrate new notification and outreach requirements into their systems, among other things. Providers need flexibility to notify and transition consumers to new plans as

¹ T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company. T-Mobile and Sprint are now one company operating under the name “T-Mobile.” The merger closed on April 1, 2020.

² See *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, Public Notice, WC Docket No. 21-450, DA 21-1453 (rel. Nov. 18, 2021) (“*Public Notice*”).

³ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, div. F, tit. V, §§ 60501-60502, 134 Stat. 429 (2021) (“*Infrastructure Act*”).

⁴ See Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N., tit. IX, § 904(c), 134 Stat. 1182, 2134 (2020) (“*Consolidated Appropriations Act, 2021*”). Unless otherwise provided, all subsequent citations to the ACP statutory provisions are to the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N., tit. IX, § 904 (2020), as amended by the Infrastructure Investment and Jobs Act, as set forth in Appendix A of the Commission’s Public Notice (“*Consolidated Appropriations Act, 2021, as amended*”).

appropriate, update billing systems to reflect new subsidy levels, and accommodate different EBB and ACP subsidy levels during the transition period. USAC needs time to adjust and implement the new eligibility requirements and notify impacted consumers, as well as to process potentially thousands of service provider participation refresh election notices. It is critical that the Commission give providers, households currently enrolled in the EBB Program, and USAC as much time and flexibility as possible to transition successfully from the EBB Program to ACP.

A. The Commission Should Ensure an Orderly Transition from the EBB Program to ACP.

The Infrastructure Act authorizes the Commission to “provide an orderly transition for participating providers and consumers” from the EBB Program to ACP.⁵ The transition to ACP will be a formidable undertaking for providers, the Commission, and USAC. It may also be confusing for current and prospective subscribers. Therefore, practical considerations should guide the Commission’s development of initial rules for ACP. Minimizing confusion for the millions of households currently enrolled in the EBB Program will play a critical role in the success of ACP, and the Commission’s transition plan should be designed to minimize the risk of lapses in benefits for these households.

The Infrastructure Act, as the Wireline Competition Bureau (the “Bureau”) recently concluded, contemplates that many of these important changes will take effect on December 31, 2021, just over six weeks after enactment.⁶ This is an extremely brief window for providers to prepare for and implement a host of changes for ACP, and even with the recent and helpful guidance provided by the Bureau, a number of transition issues remain unresolved. For

⁵ Consolidated Appropriations Act, 2021, as amended, § 904(b)(10)(C)(ii)(V).

⁶ Infrastructure Act § 60502(b)(1); *Public Notice* ¶ 3; *In re Emergency Broadband Benefit Program*, Order, WC Docket Nos. 20-445, 21-450, DA 21-1477, ¶ 4 (WCB rel. Nov. 26, 2021) (“*First ACP Guidance Order*”).

comparison, providers had almost five months to prepare between the enactment of the EBB Program’s statutory requirements in the Consolidated Appropriation Act, 2021⁷ (December 27, 2020) and the official launch of the EBB Program (May 12, 2021).⁸ Providers also had over two and a half months between the Commission’s adoption of the *EBB Program Order*⁹ (February 25, 2021) and the start date of the EBB Program.

It will be an enormous undertaking and extremely difficult for participating providers to incorporate the ACP changes at scale by December 31, 2021. There are over 8 million households currently enrolled in EBB nationwide.¹⁰ Given the complications of applying ACP’s changes to an existing program and to households that are already enrolled, it is likely that full implementation of ACP will be far more complex than the initial implementation of the EBB Program and take even longer to carry out.¹¹ The truncated timeframe also presents particular challenges for providers, such as T-Mobile, which typically try to avoid making major changes to billing and other systems at the end of the year to avoid disrupting holiday season sales.

During this abbreviated transition period, providers will be called on to implement and track different subsidy levels and overhaul billing systems and notification processes for the new ACP rules. To ensure that this transition proceeds as smoothly as possible, the Commission should

⁷ See *supra* note 4.

⁸ *Wireline Competition Bureau Announces Emergency Broadband Benefit Program Launch Date*, Public Notice, 36 FCC Rcd 7614 (2021).

⁹ See *In re Emergency Broadband Benefit Program*, Report and Order, 36 FCC Rcd 4612 (2021) (“*EBB Program Order*”).

¹⁰ See Universal Service Administration Co., *Emergency Broadband Benefit Program Enrollments and Claims Tracker*, <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker> (last updated Dec. 6, 2021).

¹¹ Letter from Michael Romano, Senior Vice President – Industry Affairs and Business Development, NTCA-The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 20-455, 21-450, at 1-2 (Dec. 2, 2021) (explaining the complications involved in the transition from the EBB Program to ACP) (“NTCA Ex Parte”).

establish a limited safe harbor for providers acting in good faith to implement ACP while complying with the Commission's EBB rules for the six-month period following the effective date of ACP.¹² For example, providers should be given leeway for good-faith efforts to implement any notification or advertising requirements during the transition and to implement two different subsidy levels. The Commission should also give providers acting in good faith the opportunity to cure any errors in their implementation of ACP during this period without penalty (including through amended reimbursement claims).

The Commission should also make other clarifications regarding the transition from the EBB Program to ACP. For example, the Commission should make clear that a provider can help transition a subscriber to a different service plan to avoid or minimize a rate increase and that these actions would not be considered prohibited upselling or downselling.¹³

B. The Commission Should Not Put the Onus on Current EBB Households to Opt-In to ACP, When They Have Already Opted-In to Receiving Benefits.

The Public Notice proposes to require that providers make certain disclosures to consumers and obtain their affirmative consent before enrolling them in ACP.¹⁴ T-Mobile agrees that service providers should notify their EBB subscribers of any forthcoming changes to their service plans or to their monthly payments.¹⁵ The Commission should not, however, require households

¹² Consolidated Appropriations Act, 2021, as amended, § 904(j) (providing a safe harbor for providers who rely in good faith on information given to the provider for verifying eligibility). T-Mobile supports extending this safe harbor protection for ACP and encourages the Commission to extend the safe harbor to inadvertent errors related to program rules that are unrelated to eligibility and that may be difficult to implement fully during the extremely short transition to ACP.

¹³ *Public Notice* ¶ 93.

¹⁴ *Id.* ¶¶ 99-102.

¹⁵ *In re Emergency Broadband Benefit Program*, Order, WC Docket Nos. 20-445, 21-450, DA 21-1524, ¶ 20 (WCB rel. Dec. 8, 2021) (“*Second ACP Guidance Order*”) (directing participating providers to notify their EBB subscribers about upcoming changes).

currently enrolled in the EBB Program to affirmatively opt-in to ACP to continue receiving benefits after the 60-day transition period.¹⁶

An opt-in requirement for current EBB households transitioning to ACP, particularly for those households that will experience no service or monthly end user fee changes, is contrary to the public interest for several reasons. First, current EBB households who opted-in to the program only weeks or, at most, months ago are likely to be confused by a request for another opt-in.

Second, requiring households that are already enrolled in EBB to affirmatively opt-in to ACP, which is not required by the Infrastructure Act, will result in significant consumer disruption. Indeed, an opt-in requirement could undermine the fundamental goal of the program because it could result in a significant portion of the over 8.3 million EBB households being de-enrolled and losing critical broadband service simply because they do not respond to an opt-in notice, even when their actual preference is to continue to participate in the program. There is ample evidence that consumers tend not to respond even to carefully crafted notifications, even when it is in their interest to do so. The Commission should avoid taking actions that, although well-intentioned, may inadvertently cause a significant number of households to lose their benefits. If the Commission insists on an opt-in requirement, it should, at a minimum, exclude any EBB household whose monthly bill is \$30 or less from the opt-in requirement.

Moreover, requiring an opt-in relies on the incorrect assumption that current EBB households do *not* wish to continue receiving *any* benefits at all under the program because of the rule changes planned for ACP. There is no basis for that assumption, particularly for households that are already on service plans that will not be affected by the Infrastructure Act's amendments

¹⁶ *Public Notice* ¶ 104; NTCA Ex Parte at 2. Although the *First ACP Guidance Order* provides that currently enrolled households will continue to receive their current benefits during the 60-day transition period, *First ACP Guidance Order* ¶ 11, it does not specify what happens to these subscribers once that transition period ends.

(e.g., service plans priced at \$30 or less). For current EBB households that may in fact choose to stop participating in the program, an opt-out alternative is more than sufficient.

With respect to the timing of any notice, T-Mobile supports giving providers and consumers as much time as possible to prepare for the transition, and the Commission should tailor its planned implementation of the new ACP rules accordingly. As discussed above, participating providers will likely need several months to integrate all of the rule changes into their existing systems and give customers multiple notices during the transition period. The Commission should give providers ample time to prepare the necessary notices and households ample time to respond to the program changes once those notices are received.

One situation the Commission has not addressed in which notification would be important is when an existing EBB provider decides (via an updated USAC election notice) not to participate in ACP. In this case, T-Mobile supports adoption of a simple notification process, whereby the provider notifies EBB households that the EBB program benefits will not continue and that the provider will not offer service under the ACP via email or text message 30 days in advance, followed by a second notice via text or email 15 days thereafter. This will give affected households sufficient time to transition to new service plans or transfer their benefits to another ACP provider. Thirty days' notice is consistent both with rules relating to customer notice of the expiration of the EBB Program¹⁷ and with the Lifeline de-enrollment rules.¹⁸

C. The Commission Should Ensure that EBB Households Continue to Receive an Affordable Service Offering.

The Commission should limit the potentially disruptive effects of the shift to ACP by allowing current EBB households to maintain their current benefits for as long as possible. T-

¹⁷ See 47 C.F.R. § 54.1610(d).

¹⁸ See *id.* § 54.405(e)(1).

Mobile encourages the Commission to allow households that were enrolled in EBB as of November 15, 2021, to continue receiving up to \$50 in benefits until the \$3.2 billion appropriated for the EBB Program is expended, or until March 1, 2022, whichever is later. Doing so is fully consistent with the Infrastructure Act, which provides that these households “shall continue to have access to an affordable service offering.”¹⁹ The Commission should leverage this authority to ensure these low-income households can maintain their EBB benefits for as long as possible.

The Public Notice seeks comment on implementing the “affordable service offering” language and notes that this section differs from the provision establishing the 60-day transition period.²⁰ The 60-day transition provision allows households that were enrolled between November 16 and December 31 to continue receiving their benefits for a defined 60-day period, even if they are not eligible for ACP.²¹ By contrast, the affordable service offering provision applies to households that were enrolled as of November 15, and Congress did not set any time limit on how long these households “shall continue to have access to an affordable service offering.” The 60-day transition provision also concerns the availability of the “affordable connectivity benefit,” whereas the affordable service offering provision does not use this term and refers instead to “an affordable service offering.” The Commission must read these two provisions harmoniously and give full effect to both provisions.²² To the extent that the affordable service provision is ambiguous, the Commission has discretion to adopt a reasonable interpretation of it.

¹⁹ Infrastructure Act § 60502(b)(3). Notably, this subsection does not require that enrolled customers receive “the” affordable connectivity benefit.

²⁰ *Public Notice* ¶ 125.

²¹ Infrastructure Act § 60502(b)(3).

²² *See King v. Burwell*, 576 U.S. 473, 486 (2015).

Allowing current EBB households to continue receiving up to \$50 until the EBB Program funds are expended or until March 1, 2022, is a reasonable way to give effect to this provision. It is also the interpretation that is most consistent with Congress’s goal of keeping EBB households connected and minimizing the burdens imposed on them by the transition to ACP.

T-Mobile also supports the Bureau’s decision to allow EBB households—including those households that enrolled as of December 30, 2021—to continue receiving up to \$50 per month through the 60-day transition period, as contemplated by the Infrastructure Act.²³

D. The Commission Should Use an Annual Recertification Process to Implement New Eligibility Criteria.

T-Mobile supports the Commission’s proposal to adopt an annual recertification requirement for ACP that is administered by USAC for households that qualified via the National Verifier and modeled after the Lifeline process.²⁴ To minimize disruption for current EBB households, subscribers who qualified via loss of income should be recertified through this annual recertification process—rather than requiring impacted households to submit to an ad hoc reverification during the transition period. The Commission should therefore reconsider the Bureau’s guidance with respect to these households,²⁵ as immediate verification is not required by the Infrastructure Act, and implementing key changes to the program through the annual recertification process would make the transition to ACP as seamless and orderly as possible.

If the Commission requires households who qualified for the EBB Program based on criteria not applicable to ACP to demonstrate their eligibility during the transition, the Commission should direct USAC to identify and notify these households as soon as possible, no later than

²³ *First ACP Guidance Order* ¶ 11; *Second ACP Guidance Order* ¶ 14.

²⁴ *Public Notice* ¶ 49; 47 C.F.R. § 54.410(f).

²⁵ *First ACP Guidance Order* ¶ 13.

December 31, 2021. These households should be given ample time and support to reverify their eligibility. Consistent with the *First ACP Guidance Order* and *Second ACP Guidance Order*,²⁶ the Commission should permit these households to continue receiving benefits up to \$50 during the 60-day transition period, and these households should also be allowed to transition to ACP and remain enrolled through their reverification anniversary date.²⁷ These actions would be consistent with the statutory directive that these households continue to receive an “affordable service offering” for as long as possible. USAC should also notify providers about any households on their EBB rolls that are subject to this immediate reverification requirement so that providers can assist these households with reverification or help them transition seamlessly to a new service plan.²⁸

With respect to implementing the Supplemental Nutrition Program for Women, Infants, and Children (“WIC”) eligibility criterion,²⁹ T-Mobile understands that USAC will not have an automated computer matching agreement in place by December 31, 2021. However, households generally qualify for WIC if they participate in SNAP, Medicaid, and other programs.³⁰ Until USAC systems are updated to verify WIC eligibility, a household should therefore be deemed eligible under the WIC criterion if it is found in the SNAP or Medicaid databases or if the

²⁶ *Id.* ¶ 11; *Second ACP Guidance Order* ¶ 14.

²⁷ The Commission has taken similar action to ensure consumers remain connected during the pandemic, including waiving the reverification process requirements for the Lifeline Program. *See In re Lifeline and Link Up Reform and Modernization*, Order, WC Docket No. 11-42, DA 21-1191 (Sept. 22, 2021).

²⁸ *See Second ACP Guidance Order* ¶ 17.

²⁹ Consolidated Appropriations Act, 2021, as amended, § 904(a)(6)(E).

³⁰ USDA Food and Nutrition Service, *WIC Eligibility Requirements*, <https://www.fns.usda.gov/wic/wic-eligibility-requirements> (updated June 19, 2020).

household's income falls within the income range permitted by WIC (between 100% and 185% of the Federal Poverty Guidelines).³¹

II. THE COMMISSION SHOULD CONTINUE TO MAKE IT AS SIMPLE AS POSSIBLE FOR PROVIDERS TO UPDATE THE SCOPE OF THEIR PARTICIPATION.

A. Allowing Existing EBB Providers to Refresh Their Election Notices Will Be an Efficient Way for Them to Transition to ACP.

The Public Notice seeks comment on whether to require providers currently participating in the EBB Program to submit a new election notice for ACP. As the Public Notice explains, a new or refreshed election notice “would not only give providers an opportunity to refresh the information they initially provided for the EBB Program, but would also ensure that providers are committed to participating in this new program and understand the program requirements.”³² T-Mobile supports adopting a simple process for participating providers to refresh their election notices, expand their participation to additional areas, and notify the Commission of their withdrawal from the program.

Because ACP is a voluntary program, the Commission should establish a streamlined process for providers to exit the program if they no longer wish to participate.³³ As mentioned above in connection with the notifications to consumers regarding the transition to ACP, the Commission should allow providers to withdraw from ACP at any time by updating their election

³¹ As the EBB Program transitions into a longer-term program, USAC should provide additional technical support for participating providers, particularly during off-hours, evenings, and weekends, when API or other technical issues arise (separate from the lifelineprogram@usac.org). More generally, it is imperative that USAC implement APIs that enable service providers to upload eligibility documents and process new eligibility information from USAC (e.g., relating to 200% of poverty level, WIC) on an automated basis. Manual processes are extremely inefficient and cumbersome, and it forces eligible households to wait longer to begin receiving much-needed benefits.

³² *Public Notice* ¶ 14.

³³ *Id.* ¶ 13.

notice with USAC and by notifying their enrolled households via email or text message at least 30 days in advance, followed by a second notice via text or email 15 days thereafter.³⁴ This will give subscribers sufficient time to transition to a new service plan or transfer their benefits to another ACP provider.

Finally, the Commission should allow different lines of businesses or brands—not just different legal entities within the same corporate family—to file separate election notices. T-Mobile USA, for example, encompasses multiple lines of industry-leading and innovative broadband service—T-Mobile postpaid, Metro T-Mobile prepaid, Home Internet, T-Mobile for Government, and T-Mobile for Business—not all of which are organized into separate subsidiaries. As T-Mobile evaluates continued participation in ACP, giving providers to flexibility to participate and innovate through specific lines of business or brands will encourage broader participation. This flexibility would also encourage providers to develop and make innovative service offerings available to eligible households.

B. For Mobile Wireless Providers, the Commission Should Only Use ZIP Codes for Informational Purposes.

The Public Notice proposes to require electing providers to submit a list of ZIP codes where they will offer ACP service.³⁵ T-Mobile does not oppose using ZIP codes to support the “Companies Near Me” Tool to give consumers convenient information about which providers offer ACP service in their area. However, a representation of the ZIP codes in which the provider intends to offer service should not be considered binding, particularly for mobile wireless providers. Mobile wireless providers’ coverage areas do not line up neatly with ZIP code

³⁴ See *supra* at 6.

³⁵ Public Notice ¶ 17.

boundaries. For that reason, coverage maps and providers' descriptions of their ACP service areas would be a more accurate and more useful way to demarcate where they intend to offer service.

III. THE COMMISSION'S IMPLEMENTATION OF ACP SHOULD CONTINUE TO PROMOTE WIDESPREAD PARTICIPATION AND EFFICIENT DELIVERY OF BENEFITS FOR CONSUMERS.

A. The Commission Should Confirm that "Any" Offering Includes Low-Income Plans and Does Not Include Minimum Service Standards.

Under the Infrastructure Act, providers must allow subscribers to apply ACP benefits to "any internet service offering of the participating provider, at the same terms available to households that are not eligible households."³⁶ This provision of the Infrastructure Act is intended to expand the scope of internet service offerings made available to eligible households than were permitted under the EBB Program, which limited benefits to service plans that were offered "in the same manner, and on the same terms, as described in any of such provider's offerings" available as of December 1, 2020.³⁷

The Commission should clarify that "any internet service offering of the participating provider" refers to the provider's *current* service offerings at the time of the household's ACP enrollment and that providers are therefore not obligated to apply ACP benefits to legacy or grandfathered service plans.³⁸ It would be incredibly difficult for providers to expand ACP benefits to potentially all legacy or grandfathered plans that are no longer actively marketed or

³⁶ Consolidated Appropriations Act, 2021, as amended, § 904(b)(7)(i). The Commission should clarify that that "any internet service offering of the participating provider" refers, at most, to the provider's current service offerings at the time of ACP enrollment

³⁷ Consolidated Appropriations Act, 2021, § 904(a)(9); 47 C.F.R. § 54.1600(n). The Infrastructure Act strikes the December 1, 2020 limitation. *See* Infrastructure Act § 60502(b)(1)(A)(iii); *Public Notice* ¶ 15.

³⁸ *Public Notice* ¶ 53; *See* Letter from Anisa Green, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450, at 1 (Dec. 3, 2021) ("participating providers should only be required to offer ACP on generally available actively sold plans, with the option to include grandfathered plans") ("AT&T Ex Parte").

offered—nor would it meet the objectives of advancing broadband adoption. It could also limit providers’ ability to develop innovative new service offerings for ACP. Although Congress intended to expand the options available to consumers, there is no indication that it intended to mandate that providers offer legacy or grandfathered broadband plans through ACP.

Given that the goal of the Infrastructure Act’s “any internet service offering” language was to expand the scope of services available under ACP, the Commission should make clear that low-income plans (including Lifeline service plans) that are available only to qualified low-income subscribers are eligible for reimbursement under ACP.³⁹ In particular, the Commission should make clear that the phrase “at the same terms available to households that are not eligible households” does not mean that these types of plans are excluded from ACP.⁴⁰ Rather, the Commission should clarify that this phrase was intended as a safeguard to ensure that low-income households are not subject to different terms for the same service offering as other households. This is supported by Congress’s decision to allow providers to be automatically approved for the EBB Program (and ACP) if they have an established low-income program “as of April 1, 2020, that is widely available and offers internet service offerings to eligible households and maintains verification processes that are sufficient to avoid fraud, waste, and abuse.”⁴¹ The Infrastructure Act leaves this provision in place, which shows that Congress fully intended low-income programs to continue being offered through ACP.

The Commission should also decline to set any minimum service standards (“MSS”) for ACP, as it did for the EBB Program.⁴² ACP recipients should have the same market-based options

³⁹ *Public Notice* ¶ 55.

⁴⁰ *Id.*

⁴¹ Consolidated Appropriations Act, 2021, as amended, § 904(d)(2)(B).

⁴² *Public Notice* ¶ 54.

for internet service as households that are not eligible for ACP, as Congress intended in the Infrastructure Act. As a threshold matter, the Commission cannot limit plans available given Congress’s direction to make available “any” plan. Consumers should also have options to pick plans that work best for them.

Moreover, the Commission’s experience with MSS shows the difficulty in trying to create and apply a regulatory process for what is best left to market forces. Indeed, the Commission has waived the formula-based Lifeline MSS rule for mobile broadband in each of the past 3 years to prevent disruption of that program.⁴³ MSS are particularly unnecessary where, as with the EBB Program and ACP, the range of available service plans is very wide, to reflect a benefit of “up to” a specified dollar amount. As the Commission did for the EBB Program, the Commission should decline to adopt any MSS for ACP. Furthermore, to encourage providers to offer connected devices, it should decline to adopt any MSS for connected devices.

B. The Commission Should Continue Support for Bulk-Billing Arrangements.

The Commission seeks comment on whether to continue allowing bulk-billing arrangements under ACP, as it did for the EBB Program.⁴⁴ T-Mobile supports continuation of these bulk-billing arrangements, which can deliver benefits to many eligible households that would otherwise be “at risk of missing out on broadband services supported by the EBB Program because they may not be directly billed by the participating provider and may not have a typical relationship with the participating provider.”⁴⁵

⁴³ *In re Lifeline and Link Up Reform and Modernization et. al.*, Order, WC Docket No. 11-42, DA 20-1358, ¶ 8 (rel. Nov. 16, 2020); *In re Lifeline and Link Up Reform and Modernization et. al.*, Order, 34 FCC Rcd 11020, 11020, 11024, ¶¶ 2, 13 (2019).

⁴⁴ *Public Notice* ¶ 57; *EBB Program Order*, 36 FCC Rcd at 4633 ¶ 45.

⁴⁵ *EBB Program Order*, 36 FCC Rcd at 4633 ¶ 45.

T-Mobile for Government, for example, partners with government agencies (as well as institutions of higher education and libraries) to deliver unlimited data plans with no-cost tablets and high-speed mobile hotspot plans to the eligible households these agencies serve. Under these arrangements, eligible households submit an application through the National Verifier to demonstrate their eligibility and complete an enrollment form with T-Mobile, which is provided to them by the government agency partner.⁴⁶ Once the eligible household is enrolled, the government agency partner distributes the tablet or mobile hotspot to the household and assumes the responsibility of paying the cost of the EBB service.⁴⁷

These partnerships allow eligible households who may otherwise not have the opportunity to participate in the EBB Program (*e.g.*, those receiving public housing assistance) to have access to the program’s critical benefits. To ensure that bulk-billing arrangements remain feasible for ACP, the Commission should clarify that the “any internet service offering” requirement does not require a participating provider to make all of its service plans available as a bulk-billing plan. Providers do not (and in many cases, cannot) offer all of their consumer-facing plans through bulk-billing arrangements, but bulk-billing arrangements should still be permitted so long as the bulk-billing plans are offered on the same terms and conditions as bulk-billing plans offered to non-ACP customers.

C. The Commission’s Rules Should Continue Support for Associated Equipment, Including Mobile Hotspots.

The Public Notice seeks comment on whether monthly rental costs for “associated equipment” that is necessary for a household to receive broadband service should be eligible for

⁴⁶ See T-Mobile For Government, *Emergency Broadband Benefit*, <https://www.t-mobile.com/business/government/state-local-government/emergency-broadband-benefit> (last visited Dec. 8, 2021).

⁴⁷ See *id.*

reimbursement under ACP.⁴⁸ T-Mobile urges the Commission to continue making ACP support available to help eligible households cover the cost of this necessary equipment. Although the Infrastructure Act strikes the phrase “which shall be no more than the standard rate for an internet service offering and associated equipment,”⁴⁹ that amendment was intended to eliminate the “standard rate” language that limited the type of plans that were eligible for EBB support to those offered as of December 1, 2020. There is no evidence that this change was intended to prohibit reimbursement for associated equipment altogether. Reimbursement for such equipment still fits comfortably within the Consolidated Appropriations Act’s definition of “affordable connectivity benefit,” which is now defined to mean “a monthly discount for an eligible household applied to the actual amount charged to such household.”⁵⁰ Because eligible households are charged for the monthly rental costs of associated equipment, and because such equipment is necessary for a household to receive broadband service, the Commission should conclude that associated equipment is still eligible for reimbursement.

It would run counter to the goals of ACP to eliminate support for the equipment that households need to connect, which would only make internet service plans more costly for the households that can least afford the increase. Hotspots, for example, offer tremendous benefits to consumers and can connect multiple devices from home or on the go, and access to hotspots is critical for consumers living in areas unserved by fixed wireline, consumers who are homeless or housing-insecure, or those who otherwise need portability.⁵¹ Moreover, the Infrastructure Act

⁴⁸ *Public Notice* ¶ 59.

⁴⁹ Consolidated Appropriations Act, 2021, § 904(a)(7).

⁵⁰ *Id.*

⁵¹ See Letter from Michele K. Thomas & Indra Sehdev Chalk, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-445 at 6 (Feb. 5, 2021); Comments of Multicultural Media, Telecom and

requires participating providers to make ACP benefits available to “any internet service offering,”⁵² and providers often bundle the associated equipment (*e.g.*, mobile hotspot access) with their service plans. At a minimum, then, the Commission should allow reimbursement for the rental cost of associated equipment when offered as part of bundle.

D. To Make the Administration of ACP More Efficient, the Commission Should Require All States to Participate in NLAD for ACP.

In its Public Notice, the Commission proposes to continue its current process for enrolling Lifeline subscribers who live in California, Texas, and Oregon, the three states that have opted out of the National Verifier and National Lifeline Accountability Database (“NLAD”) for purposes of verifying Lifeline eligibility.⁵³ This separate process for opt-out states has led to serious delays in the official enrollment of eligible households in those states. In California, for example, less than half of Assurance Wireless’s new Lifeline customers who also requested EBB service through May 31, 2021, were successfully enrolled in the EBB Program by USAC as of June 2021.

These delays are to the serious detriment of eligible households, and there is no reason to continue allowing states to opt out of the use of NLAD for ACP. The Commission should eliminate this option to allow for more efficient administration of the ACP and to ensure that eligible households in opt-out states are not disadvantaged. In the alternative, the Commission should adopt the National Lifeline Association’s proposal to accept the opt-out state

Internet Council and National Urban League at 7, WC Docket No. 20-445 (Jan. 25, 2021); Comments of National Digital Inclusion Alliance at 7, WC Docket No. 20-445 (Jan. 25, 2021); Comments of the City of Seattle, Washington State Broadband Office, Seattle Public Schools District and Seattle Housing Authority at 13, WC Docket No. 20-445 (Jan. 25, 2021).

⁵² Consolidated Appropriations Act, 2021, as amended, § 904(b)(7)(A).

⁵³ *Public Notice* ¶ 40. *See* Letter from Michele K. Thomas, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-445 (June 16, 2021).

administrators' Lifeline eligibility approvals for ACP enrollment purposes, and USAC should accept information regarding these approvals directly from the opt-out state administrators.⁵⁴

At a minimum, if certain states continue to opt-out of NLAD, they should be required to provide updates to NLAD on a daily basis. While USAC has made significant strides in updating NLAD for the opt-out states (going from monthly to weekly updates, and processing the update files in a shorter period of time), a week-long lag in reporting, plus processing time, can delay the date on which low-income Americans can receive the benefit, which in turn impacts processing of snapshot enrollment reporting.

E. The Commission Should Harmonize the Reimbursement Process for ACP with the Lifeline Program and Give Providers Flexibility to Amend Their Claims, Particularly During the Transition.

T-Mobile appreciates the Commission's thoughtful approach to revising its reimbursement processes for ACP and supports many of the Commission's proposals for harmonizing the ACP reimbursement process with the Lifeline Program's rules.⁵⁵ In particular:

- **Snapshot date:** T-Mobile supports the Commission's proposal to continue using the 1st of the month as the snapshot date for ACP, which is consistent with the EBB Program and will align with Lifeline Program's rules.⁵⁶
- **Deadline for Certifying Claims:** As it does with the Lifeline Program, the Commission should conclude that ACP reimbursement claims filed after the 15th day of the month are permitted.⁵⁷ Under this approach, a claim filed after the 15th will only

⁵⁴ Letter from John J. Heitmann, Counsel to the National Lifeline Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-445 at 3 (Nov. 15, 2021).

⁵⁵ *Public Notice* ¶ 74.

⁵⁶ *Id.*

⁵⁷ *Id.* ¶ 77.

delay the disbursement, but will not disqualify the reimbursement claim altogether.⁵⁸ In the *EBB Program Order*, the Commission adopted a hard deadline of the 15th day of the month to enable USAC to forecast the exhaustion of program funds given the temporary nature of the program.⁵⁹ But this rationale does not apply to the longer-term ACP, and the Commission should give providers the same latitude that they have under the Lifeline Program to submit reimbursement claims. The additional time will help ensure that the claims filings are accurate.

- **Amending Reimbursement Claims:** T-Mobile supports allowing providers to revise their reimbursement claims for up to one year,⁶⁰ which will not only allow providers to make any necessary corrections related to complications with the transition period but will also help support providers' ongoing compliance efforts as the EBB Program transitions into a permanent program. The Commission should also establish a window for providers to amend their previously filed EBB reimbursement claims so that providers can make any necessary corrections. The *EBB Program Order* prohibited such revisions to make it easier to forecast when the temporary EBB Program would sunset so that providers and consumers could plan accordingly.⁶¹ Since ACP does not sunset, the Commission should welcome these revisions within a reasonable time period.

⁵⁸ See 47 C.F.R. § 54.407; *In re Lifeline and Link Up Reform and Modernization et. al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6787 ¶ 303 (2012).

⁵⁹ *EBB Program Order*, 36 FCC Rcd at 4661 ¶¶ 98-99.

⁶⁰ *Public Notice* ¶ 78.

⁶¹ *EBB Program Order*, 36 FCC Rcd at 4661-62 ¶ 100.

- **Non-Usage:** The Commission should carry forward the approach it has taken to non-usage for the EBB Program, under which households that do not use their services for a given month are not de-enrolled but are simply deemed ineligible for reimbursement for that month.⁶² This is an efficient and equitable approach (particularly for subscribers with limited digital literacy or those who are new to broadband access), and it accommodates legitimate reasons for temporary non-usage, such as hospitalization or difficulty charging a device in transient housing situations.⁶³ This will suffice to prevent improper payments, and it will avoid burdening households who may later wish to resume participation in ACP after a period of non-usage.
- **Enrollment Representatives:** T-Mobile generally supports the Commission’s proposal to require that agents and enrollment representatives be registered with the Representative Accountability Database (“RAD”).⁶⁴ However, the Commission should clarify that the registration requirement does not apply to bulk-billing arrangements where a government agency functions as an enrollment representative. Furthermore, as was the case with the EBB Program,⁶⁵ there is no need to prohibit compensation for enrollment representatives based on the number of households who

⁶² *Public Notice* ¶ 48.

⁶³ The Commission waived the Lifeline non-usage rule during the pandemic. *In re Lifeline and Link Up Reform and Modernization*, Order, 35 FCC Rcd 2950 (WCB Mar. 30, 2020). During this time, a significant number of T-Mobile Lifeline customers resumed using their service after a 30 or 45-day hiatus. Had the non-usage rule not been waived during this period, customers with no usage during the relevant period would have been de-enrolled and forced to re-apply for the service, resulting in a potential gap in service and an administrative burden.

⁶⁴ *Public Notice* ¶ 20.

⁶⁵ *EBB Program Order*, 36 FCC Rcd at 4680-81 ¶ 147.

apply or enroll in ACP.⁶⁶ Appropriate incentives for enrollment representatives can help ACP reach as many eligible households as possible, while prohibiting those incentives could “discourag[e] provider participation and diminish[] consumer choice” in ACP.⁶⁷ Furthermore, if a provider relies exclusively on the National Verifier to verify a household’s eligibility for ACP, there is minimal risk of waste, fraud, or abuse because only eligible households will qualify. At a minimum, the Commission should not prohibit commissions for enrollment representatives if a provider relies solely on the National Verifier for eligibility determinations.

- **State Lifeline Support:** With respect to the application of different subsidies to an ACP plan, T-Mobile does not support prioritizing state Lifeline benefits over federal ACP benefits, and nothing in the Infrastructure Act authorizes the Commission to prioritize benefits in this way.⁶⁸ State Lifeline programs are separate and distinct from ACP as well as the federal Lifeline Program, and it would not be appropriate to treat the phrase “full Lifeline support” as referring to these separate state programs. Moreover, unlike the federal Lifeline Program, there is no basis for inferring that Congress intended the Commission to apply state Lifeline benefits (which are not within its jurisdiction) before applying the ACP benefits. When it is necessary to apply multiple programs’ subsidies to a given household’s service plan, the Commission should begin by applying the federal Lifeline subsidy, then applying ACP benefits, and

⁶⁶ See AT&T Ex Parte at 1.

⁶⁷ *EBB Program Order*, 36 FCC Rcd at 4681 ¶ 147.

⁶⁸ *Public Notice* ¶ 75.

finally allowing application of state Lifeline benefits to the remaining balance if applicable.

F. The Commission Should Clarify that Participating Providers May Use Credit Checks that Are Unrelated to the Receipt of ACP Benefits.

The Infrastructure Act amends the Consolidated Appropriations Act, 2021 so that providers must allow subscribers to apply ACP benefits to “any internet service offering,”⁶⁹ and it prohibits “requir[ing] [an] eligible household to submit to a credit check in order to apply the affordable connectivity benefit to an internet service offering of the participating provider.”⁷⁰ The Commission should clarify that this prohibition on credit checks applies only to the receipt of ACP benefits, meaning that providers may not condition the receipt of ACP discounts on the results of a credit check. Credit checks conducted in the ordinary course of business, however, such as to determine whether a consumer qualifies for certain internet service plans or certain devices—should be permissible if they do not subject ACP-eligible households to different treatment than other subscribers.

Broadband providers may use credit checks for a variety of purposes as part of their general terms of service, including when determining whether to initiate postpaid services or determine whether a deposit may be necessary for a device or equipment. These processes benefit subscribers by reducing upward pressures on service plan rates and device pricing, and they are particularly important for the administration of postpaid plans.

By adding the prohibition on credit checks to “apply” ACP benefits to an internet service offering, Congress did not mean to prohibit generally applicable credit checks that apply to all

⁶⁹ Consolidated Appropriations Act, 2021, as amended, § 904(b)(7)(A)(i).

⁷⁰ *Id.* § 904(b)(7)(A)(ii).

customers. There is no indication in the Infrastructure Act that Congress intended to disrupt standard business practices that apply to all subscribers for determining *which* internet service plans or devices a given subscriber qualifies for. That is why the statute only prohibits the specific practice of using credit checks as a condition for “apply[ing] the affordable connectivity benefit.”⁷¹

These clarifications are critical for ensuring widespread participation in ACP going forward and for maximizing ACP households’ choice of plans. Mobile providers have accounted for more than two-thirds of all EBB subscriptions (67.9%).⁷² Clarifying the scope of the prohibition on credit checks in a way that ensures consumers have access to ACP while avoiding disruption to business plans balances Congress’ goals while encouraging broad participation in the Program.

G. The Commission Should Clarify the Trigger for When Providers May Terminate Broadband Service After 90 Days of Non-Payment.

The Infrastructure Act permits providers to discontinue service “after 90 days of nonpayment.”⁷³ The Commission should clarify that this provision allows a provider to terminate broadband service to an ACP household after 90 days of nonpayment from the date of the invoice for postpaid plans. Doing so is consistent with many retail billing practices and will ensure a more seamless implementation of ACP. For similar reasons, because prepaid customers do not receive an invoice, the Commission should confirm that the 90-day nonpayment does not apply to prepaid services. Finally, if the Commission ultimately decides to require currently enrolled households

⁷¹ *Id.*

⁷² Universal Service Administration Co., *Additional EBB Program Data*, <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/additional-ebb-program-data> (last updated Nov. 1, 2021).

⁷³ Consolidated Appropriations Act, 2021, as amended, § 904(b)(7)(B).

to opt-in to ACP, it should clarify that the 90-day nonpayment period does not reset on the effective date of ACP.

IV. THE COMMISSION SHOULD GIVE PROVIDERS FLEXIBILITY IN PROMOTING AWARENESS OF ACP.

A. The Commission Should Clarify ACP Promotion Requirements for Customers Subscribing to or Renewing a Service Plan.

The Infrastructure Act requires providers to inform a customer about ACP “[w]hen a customer subscribes to, or renews a subscription to, an internet service offering.”⁷⁴ In its Public Notice, the Commission seeks comment on what constitutes a “renewal” for these purposes.⁷⁵ As the Un-carrier, T-Mobile does not hold subscribers to long-term service contracts but allows them to cancel their service anytime with no termination fees. The Commission should confirm that a subscriber only “renews” a plan that is offered for a fixed term, longer than one month. Prepaid customers or customers on month-to-month plans do not “renew” their services in the sense intended. There is no indication that Congress intended to inundate these consumers with near constant notifications about ACP. Rather, the Commission should make clear that “renewal” applies to longer-term contracts.

B. The Commission Should Adopt the Lifeline Advertising Rules for ACP.

T-Mobile supports applying the Lifeline advertising standard to ACP. The Lifeline rules require Lifeline providers to “[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.”⁷⁶ This standard gives providers appropriate flexibility, and there is no need for more detailed or overly prescriptive rules for how providers promote awareness of ACP. Service providers have significant expertise in consumer

⁷⁴ *Id.* § 904(b)(10)(A).

⁷⁵ *Public Notice* ¶ 106.

⁷⁶ 47 C.F.R. § 54.405(b).

advertising and outreach, and it is clearly in their interest to make as many prospective subscribers aware of the benefit as possible.

C. The Commission Should Leverage Its Existing Interfaces to Support Informal ACP Complaints.

T-Mobile supports the proposal to update the Consumer Complaint Center interface to include a portal for complaints about ACP compliance.⁷⁷ Because households are less likely to engage with promotional materials or other general ACP notices once they are already enrolled in the program, providers should be allowed to satisfy their obligations to inform subscribers about the ACP complaint process by including information about this portal on their websites. This will be sufficient to notify enrolled households of the complaint process.

CONCLUSION

ACP holds the promise of bringing transformational broadband service to low-income consumers on an ongoing basis, and T-Mobile supports the Commission's efforts to close the digital divide and advance its universal service goals by implementing ACP in the most efficient way possible. T-Mobile looks forward to working with the Commission to deliver broadband access to low-income consumers.

Respectfully submitted,

/s/ Michele K. Thomas
Michele K. Thomas
Indra Sehdev Chalk
Norina Moy

⁷⁷ *Public Notice* ¶ 87.

T-MOBILE USA, INC.
601 Pennsylvania Ave., NW
North Building, Suite 800
Washington, DC 20004
(202) 654-5900

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